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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**

6
7 STAR MALLORY,
8 Appellant,

9 v.

10 STERLING PACIFIC LENDING, INC.,
11 Appellee.

Case No. [15-cv-04005-BLF](#)

ORDER TO SHOW CAUSE

[Re: ECF 2]

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13 To Appellant Star Mallory, you are hereby ORDERED to SHOW CAUSE why this case
14 should not be dismissed for failure to prosecute and failure to comply with the Federal Rules of
15 Bankruptcy Procedure and the Bankruptcy Local Rules.

16 On September 1, 2015, the Clerk docketed Appellant's Notice of Appeal of the Bankruptcy
17 Court's order dismissing her Chapter 13 bankruptcy for ineligibility under 11 U.S.C. § 109(e).
18 ECF 1; *see also In re Star Mallory*, 15-bk-50839, Docket. No. 35. On September 3, 2015, the
19 Clerk filed an Initial Case Management Scheduling Order, directing the parties to perfect the
20 record pursuant to the Federal Rules of Bankruptcy. ECF 2.

21 Under Bankruptcy Rule 8009, formerly Rule 8006, parties appealing a bankruptcy court
22 order must file "a designation of the items to be included in the record on appeal and a statement
23 of the issues to be presented" within 14 days of filing a notice of appeal. Fed. R. Bankr. P.
24 8009(a). Within that same period, the appellant must order a transcript of the proceedings and file
25 a copy of the order with the bankruptcy clerk or file a certificate stating that s/he is not ordering a
26 transcript. Fed. R. Bankr. P. 8009(d). To date, Appellant has filed nothing but her Notice of
27 Appeal in relation to this appeal before this Court or the bankruptcy court.


28 The federal and local rules make clear that such failure may result in dismissal. "An

1 appellant's failure to take any step other than the timely filing of a notice of appeal does not affect
2 the validity of the appeal, but is ground only for the district court or BAP to act as it considers
3 appropriate, *including dismissing the appeal.*" Fed. R. Bankr. P. 8003(a)(2) (emphasis added).
4 Pursuant to the local rule, "[i]f the appellant fails to perfect the appeal in the manner prescribed by
5 Bankruptcy Rule 800[9], any appellee may file a motion in the District Court to dismiss the
6 appeal" or the Bankruptcy Court may recommend that the appeal be dismissed. Bankr. L. R. 8007-
7 1. *See also In re Fitzsimmons*, 920 F.2d 1468, 1472 (9th Cir. 1990) (discussing previous versions
8 of federal and local rules with same language as "two rules that warn[] of dismissal").

9 Approximately five months have passed since Appellant filed her Notice of Appeal. She has
10 taken no action in the case since then. Accordingly, the Court hereby ORDERS Appellant to show
11 cause why these cases should not be dismissed for failure to prosecute and failure to comply with the
12 Federal Rules of Bankruptcy Procedure and the Bankruptcy Local Rules. Appellant has until
13 **February 24, 2016** to file a response to this order. Failure to do so may result in dismissal.

14 **IT IS SO ORDERED.**

15 Dated: February 10, 2016

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17 BETH LABSON FREEMAN
18 United States District Judge
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